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May 14, 1996

Office of the Secretary
Federal Communications Commission
1919 "M" Street, Northwest
Washington, DC 20554

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Re: Comments of Summit Communications, Inc., concerning the Notice of Proposed Rulemaking, MM Docket No. 92-266, CS Docket 96-60 released March 29, 1996.
Leased Commercial Access

Enclosed are an original and nine copies of our comments regarding the Notice of Proposed Rulemaking described above. We hope that the views of this small cable television operator will be useful to the Commission in formulating final rules regarding leased access rate regulation.

If you should have any questions about the enclosed, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hirshfield", with a long horizontal flourish extending to the right.

On 05/15/96, [illegible] received
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)

Implementation of Sections)
of the Cable Television)
Consumer Protection and)
Competition Act)
of 1992)

MM Docket 92-266

Rate Regulation)
Leased Commercial Access)

CS Docket 96-60

To: The Commission

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COMMENTS OF SUMMIT COMMUNICATIONS, INC., CONCERNING THE
NOTICE OF PROPOSED RULEMAKING RELEASED MARCH 29, 1996

Date: May 14, 1996

James A. Hirshfield
President

Summit Communications, Inc.
3633 136th Place Southeast, Suite 107
Bellevue, Washington 98006
206-747-4600

COMMENTS OF SUMMIT COMMUNICATIONS ON LEASED ACCESS NPRM

1. Summit Communications, Inc., is a small MSO serving 37,000 cable TV customers in 31 cable systems in Washington, Oregon and Idaho, operating under 42 franchise agreements. Summit's majority owners are me and my wife.

DEFINITION OF "COST"

2. What cost? This is the poorly defined issue which pervades the NPRM. What is opportunity cost? The NPRM incorrectly defines this as a series of present income streams to be lost, or new expenses to be incurred. More correctly, opportunity cost is foregone income which cable operators do not yet have. While logic tells us this is what Congress intended, the difficulty in quantifying such an item has apparently led the Commission back to historical costs. The difficulty in quantifying opportunity costs should not dissuade the Commission from correctly identifying them as the costs most at issue in this proceeding.

3. Competition. The 1982 Act presumed no competition, and wished to ensure programmers a local outlet through cable systems. The 1995 Act very definitely indicates competition is intended, and takes significant steps to ensure it occurs. The effect of this change on opportunity cost is great. If the law assumes no competition (I will not repeat the arguments which suggest this was a bad assumption even in 1982), then a cable TV operator can charge whatever he wants whether his programming is great or lousy. (While we do not agree with this presumption, it follows from the 1982 Act). If the law presumes competition, then the programming a cable operator carries is of great importance to his ability to compete in the marketplace. Said another way, the opportunity cost of placing bad programming vs good on a channel is measured over time in erosion of market share, pricing and margins.

4. Competition is definitely here nationwide in the form of three (soon to be five) DBS service providers. It also exists in many local markets in the form of wireless cable and private cable. Cable operators today must be very concerned about the array of services provided to our customers, and how they stack up with the competition.

5. Thus we urge the Commission to conclude that the reasonable cost which leased access imposes on the cable operator is its impact on the operator's competitive position.

6. How do you measure opportunity cost? Summit believes that no simple formula will do this, that facts and circumstances will differ market to market, and that another solution must be found. We **propose** that the Commission allow cable operators to include in the terms of their leased access agreements the requirement that the user agree

to pay this opportunity cost in a manner agreeable to the user and the cable company, that the cable company be allowed to consider the user's financial situation should it agree to any credit or indemnity type of arrangement, and that the facts and circumstances surrounding any disputes over the amount of opportunity costs be determinable in court.

SMALL SYSTEM COSTS

7. Significant one time costs are attendant to leasing a channel full or part time. These include legal fees required to create and negotiate a contract, management time doing the same, technician time in setting up the head end to receive the programming, and personnel costs relating to programming and studio interface. Small cable operators as a rule do not staff to do these things. Their cost is nowhere contained in their financials. Many of Summit's systems employ only one person, a technician. Sometimes two tech's will maintain six systems within a 100 mile radius. These tech's are hired because they can make the electro-mechanical beast called a cable system work, and will go out at night, in the rain, in the cold, to do so. They typically do not have great administrative skills, would not negotiate contracts, and have no studio experience (very few small systems have studios). Summit and other small operators would provide these functions centrally. If some of the functions do not now exist, we would have to add them.

8. Summit **recommends** that the Commission allow operators of smaller cable systems to recover these costs from the leased access user. A 1000 customer system definitely fits in this category, but so do larger systems. We **recommend** that systems up to 50,000 be allowed to recover these costs, understanding that they become smaller and smaller on a per customer basis as system size increases.

THE CHEROKEE STRIP

9. Cable operators' channel capacity reminds us of the Cherokee Strip. In the last century our government kept finding ways to change the deal they had made with the indians, moving them in order to use their land to satisfy some vested interest. We have at present an Oklahoma Land Rush for cable channels. The leased access aspirants are joined by the must carry folks and local municipalities in this endeavor.

10. Leased access aspirants say that the low number of leased access channel users is proof per se that access rates are too high. I could use the same argument as to why I should be allowed on the next space shuttle. I am not allowed, because I do not bring enough of the required ingredients. Most leased access aspirants do not bring enough of the right ingredients, in the form of attractive programming which cable TV customers want to watch. (Cable operators will actually pay for programming they believe their customers will find attractive). Leased access providers would find themselves on the positive side of that ledger if their programming met this test.

11. Cities are demanding increasing numbers of PEG channels (Seattle is at 11!). Valuevision has acquired a black frequency in the Seattle area, fibered its signal to head

ends of the large systems in the area, and asked for must carry. Now the Commission proposes to require cable operators to give away leased access channels (given the rate rules in the NPRM).

12. Summit **recommends** that any channel required to be carried by any government entity be subtracted from the number of channels to which the percentage is applied to determine the leased access set aside.

OTHER ISSUES

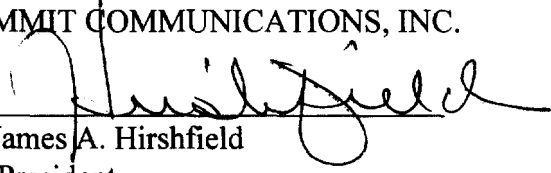
13. Porn. Cable operators **should be allowed** to require that none of the leased access users on their systems provide objectionable programming material, and be allowed to make the determination in their sole judgment, reasonably applied, whether the programming fails this test. Many cable operators feel strongly about this issue, and work to present a programming lineup which does not rely on sex. We all know that sex sells. Cable operators should not be required to participate in its sale against their will.

14. Not for profits generally find outlets on the PEG channels, which they would most likely use for hourly programming. Any non-profit large enough to meaningfully program a channel seven days a week, full time, should be considered in the same light as its competitors for channel space. That is, their wagons should start at the same position as the other would-be Oklahoma settlers.

Respectfully submitted,

SUMMIT COMMUNICATIONS, INC.

By:


James A. Hirshfield
President